

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

CLARENCE ARNEIL SIMS,

Defendant-Appellant.

UNPUBLISHED
February 11, 2003

No. 235999
Saginaw Circuit Court
LC No. 97-014501-FC

Before: Sawyer, P.J., and Jansen and Donofrio, JJ.

PER CURIAM.

Defendant Clarence Arneil Sims appeals as of right his jury trial conviction of assault with intent to do great bodily harm less than murder, MCL 750.84, and second-degree criminal sexual conduct (CSC II), MCL 750.520c(1)(f). Defendant was sentenced to 42 months' to 10 years' imprisonment for assault and 42 months' to 15 years' imprisonment for CSC II to be served concurrently. We affirm.

This case arises out of an incident that occurred on the evening July 4, 1997 continuing through the early morning hours of July 5, 1997. Defendant and Jessica Arroyo went out that night. Defendant rented a room at the Knights Inn in Buena Vista Township. Once in the motel room, both defendant and Arroyo drank alcohol, and defendant repeatedly invited Arroyo to join him in the hot tub. She refused. After some time, as Arroyo tried to leave the room, defendant put his belt around her neck and tightened it. Defendant pulled her to the hot tub and began putting her head under water until she blacked out. Later, after Arroyo regained consciousness, defendant ordered Arroyo to take her clothes off and then penetrated her in the hot tub. He then pulled her toward the bed.

Based on a guest's complaint, a motel desk clerk called 911 to request a police officer go to defendant's room. When the police arrived at the motel, defendant answered the door and was not wearing any clothes. Arroyo came running at the police wearing only panties. Arroyo was crying hysterically, appeared very frightened, and stated that defendant tried to kill her and had raped her. The police observed that Arroyo's eyes were swollen and protruding, and she had a red mark around her neck. Defendant was arrested and later convicted. This appeal followed.

Defendant's first issue on appeal is that he was denied his right to an impartial jury when the trial court did not grant a mistrial after prospective jurors stated they knew defendant. We disagree. The grant or denial of a motion for a mistrial is within the trial court's discretion and is

reviewed for abuse of that discretion. *People v Wolverton*, 227 Mich App 72, 75; 574 NW2d 703 (1997). An abuse of that discretion will be found only where the trial court's denial of the motion has deprived the defendant of a fair and impartial trial. *Id.*

A defendant has the right to an impartial jury that bases its verdict only on evidence admitted at trial. *People v DeHaven*, 321 Mich 327, 334; 32 NW2d 468 (1948). The purpose of voir dire is to "elicit sufficient information from prospective jurors to enable the trial court and counsel to determine who should be disqualified from service on the basis of an inability to render decisions impartially." *People v Sawyer*, 215 Mich App 183, 186; 545 NW2d 6 (1996). However, "'due process does not require a new trial every time a juror has been placed in a potentially compromising situation.'" *People v Grove*, 455 Mich 439, 472; 566 NW2d 547 (1997), quoting *Smith v Phillips*, 455 US 209, 217; 102 S Ct 940; 71 L Ed 2d 78 (1982). "'[I]t is virtually impossible to shield jurors from every contact or influence that might theoretically affect their vote. Due process means a jury capable and willing to decide the case solely on the evidence before it.'" *Grove, supra* at 472, quoting *Smith, supra* at 217; see also *People v Lumsden*, 168 Mich App 286, 296-299; 423 NW2d 645 (1988).

In this case, three prospective jurors stated they knew defendant. Two worked for law enforcement agencies and one worked as a security officer. Our review of the record reveals that none of the exchanges with the prospective jurors elicited information, directly or indirectly, that defendant was a criminal and, therefore, would affect the jury's impartiality. See *People v Ho*, 231 Mich App 178, 183-184; 585 NW2d 357 (1998). Importantly, none of the prospective jurors expressed any opinion regarding defendant's guilt. Merely stating that they knew defendant did not imply that it was through possible criminal activity committed by defendant. Moreover, the fleeting comments made during voir dire were vague, and there is no indication that these comments influenced or biased the jury. *Grove, supra*, 455 Mich at 476-477. Accordingly, we find the trial court properly denied defendant's motion for a new trial because the comments made by prospective jurors did not affect the impartiality of the jury.

Defendant's next issue is that the prosecutor improperly used peremptory challenges to strike African-Americans from the jury. We disagree. The determination whether a defendant has established purposeful discrimination is within the trial court's discretion and is reviewed for abuse of that discretion. *People v Howard*, 226 Mich App 528, 534; 575 NW2d 16 (1997).

When a defendant alleges a prosecutor improperly used peremptory challenges to strike African-Americans from the jury, the burden is on the defendant to make a prima facie case of purposeful discrimination. *People v Barker*, 179 Mich App 702, 705; 446 NW2d 549 (1989). To establish a prima facie case,

a defendant must show that he is a member of a cognizable racial group, that the prosecutor exercised peremptory challenges to remove from the venire members of the defendant's race, and that these facts and any other relevant circumstances raise an inference that the prosecutor used that practice to exclude the veniremen from the petit jury on account of their race. [*Id.*]

To determine whether a defendant has made a prima facie showing, the trial court must consider all relevant circumstances, including whether there is a pattern of strikes against African-American jurors and the questions and statements made by the prosecutor during voir dire and in exercising his challenges. *Id.* at 705-706. The mere fact that no member of the defendant's race ended up sitting on the jury is insufficient to make a prima facie showing of discrimination. *People v Williams*, 174 Mich App 132, 137; 435 NW2d 469 (1989).

To overcome a prima facie showing of discriminatory purpose, the prosecutor must come forth with a race-neutral explanation for challenging African-American jurors. *Howard, supra*, 226 Mich App 534. The prosecutor must articulate a neutral explanation related to the case being tried. *Id.* A mere statement of good faith or a denial of a discriminatory motive is insufficient. *Id.* The trial court must then decide if the defendant proved purposeful discrimination. *Ho, supra*, 231 Mich App 184.

In this case, the prosecutor articulated race-neutral reasons for exercising his peremptory challenges. He excused jurors based on a misdemeanor criminal conviction, an occupation, an expressed belief, and the desire to have a corrections officer seated on the jury. These reasons are valid and race neutral. Further, no questions or statements made during voir dire support an inference of discrimination that negates the prosecutor's race-neutral explanations. *Williams, supra*, 174 Mich App 137.

Additionally, the prosecutor did not use all his peremptory challenges and accepted a jury that included an African-American juror, which militates against a finding of purposeful discrimination. *Howard, supra*, 226 Mich App at 536, n 3; *Barker, supra*, 179 Mich App 706-707; *Williams, supra*, 174 Mich App 136-137. We find the trial court properly determined that the prosecutor provided race-neutral explanations for using peremptory challenges to excuse prospective jurors who were African-American.

Defendant's third issue on appeal is that his confession was involuntary. We disagree. A trial court's determination that a statement was voluntary will not be reversed unless the determination was clearly erroneous. *People v DeLisle*, 183 Mich App 713, 719; 455 NW2d 401 (1990), after remand 202 Mich App 658 (1993). "A finding is clearly erroneous if this Court is left with a definite and firm conviction that a mistake has been made." *Id.* While this Court examines the entire record to make an independent determination, deference is given to the trial court's assessment of the weight of the evidence and credibility of the witnesses. *Howard, supra*, 226 Mich App 543.

The right against compulsory testimonial self-incrimination is protected by the United States and Michigan Constitutions. US Const, Am V; Const 1963, art 1, § 17; *People v Cheatham*, 453 Mich 1, 9; 551 NW2d 355 (1996). The prosecutor has the burden to prove that a statement was voluntary by a preponderance of the evidence. *DeLisle, supra*, 183 Mich App 719. The test to determine if a confession was voluntary is whether, considering the totality of all surrounding circumstances, "the confession is 'the product of an essentially free and unconstrained choice by its maker,' or whether the accused's 'will has been overborne and his capacity for self-determination critically impaired . . .'" *People v Cipriano*, 431 Mich 315, 333-334; 429 NW2d 781 (1988), citing *Culombe v Connecticut*, 367 US 568, 602; 81 S Ct 1860; 6 L Ed 2d 1037 (1961).

In determining whether a statement is voluntary, the following facts should be considered:

the age of the accused; his lack of education or his intelligence level; the extent of his previous experience with the police; the repeated and prolonged nature of the questioning; the length of the detention of the accused before he gave the statement in question; the lack of any advice to the accused of his constitutional rights; whether there was an unnecessary delay in bringing him before a magistrate before he gave the confession; whether the accused was injured, intoxicated or drugged, or in ill health when he gave the statement; whether the accused was deprived of food, sleep, or medical attention; whether the accused was physically abused; and whether the suspect was threatened with abuse. [*Cipriano, supra*, 431 Mich 334.]

When considering these factors, defendant's confession was voluntary. Defendant was twice advised of his *Miranda*¹ rights and waived them. Defendant had the opportunity to sleep between interviews – that he did not sleep does not render his confession involuntary. The questioning of defendant was not prolonged and was videotaped. Importantly, the trial court viewed the videotape of defendant's confession and found it voluntary. Additionally, while defendant claimed he told the police his aunt was an attorney and he wanted to contact her, the videotape showed otherwise, and defendant admits as much in his brief on appeal. We find the trial court properly determined that defendant's confession was voluntary because defendant was not compelled to provide a statement to the police implicating himself in the assault.

Affirmed.

/s/ David H. Sawyer
/s/ Kathleen Jansen
/s/ Pat M. Donofrio

¹ *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).